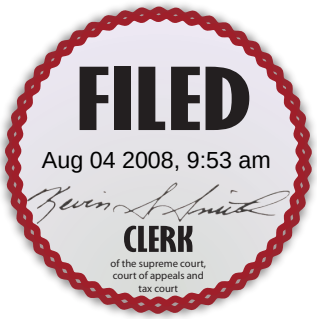

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IN THE
COURT OF APPEALS OF INDIANA

TARO BREWER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0711-CR-625
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0707-FB-70

August 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Taro Brewer was convicted of attempted theft, a Class D felony,[1] and battery, a Class A misdemeanor.[2] He contends the evidence was not sufficient to support his convictions. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 3, 2007, Brewer was inside a drug store in Merrillville. Randy Griffith, an assistant manager, saw Brewer putting an electric toothbrush down his pants. Griffith confronted Brewer, took the toothbrush from him, and told Brewer to leave. As Brewer walked toward the front door, Griffith became suspicious that Brewer might have taken more items. Griffith told the security guard, Anthony Moore, to stop Brewer. Moore stepped in front of Brewer, and Brewer tried to get away. The scuffle that ensued between Moore and Brewer eventually moved to the parking lot. Griffith went outside to help Moore restrain Brewer. Moore sustained lacerations to his left arm while trying to restrain Brewer. Another employee called the police and helped Griffith and Moore detain Brewer until police arrived. While waiting for the police, employees found two more electric toothbrushes in Brewer's waistband.

Officer Nuses of the Merrillville Police Department handcuffed Brewer and took him to the police station. He noticed Brewer moving in the back seat as if he were trying to reach something in his pants. On arrival at the police station, Officer Nuses found six or seven toothbrushes in the backseat. During the booking process, six or seven more toothbrushes were found hidden in a second pair of pants Brewer was wearing.

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[1] Ind. Code § 35-43-4-2 (theft); Ind. Code § 35-41-5-1 (attempt).
[2] Ind. Code § 35-42-2-1.

Brewer was charged with robbery, attempted theft, and battery. The State amended the information to allege Brewer was an habitual offender.[3] A jury found Brewer not guilty of robbery, but guilty of attempted theft and battery. The jury also found Brewer to be an habitual offender. The court sentenced Brewer to thirty months imprisonment for the attempted theft, to run concurrent with twelve months for battery. Finding Brewer an habitual offender, the court enhanced the attempted theft sentence by thirty-six months, for a total executed sentence of sixty-six months.

DISCUSSION AND DECISION

When reviewing sufficiency of evidence "we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Davis v. State*, 813 N.E.2d 1176, 1178 (Ind. 2004). It is the role of the fact-finder to determine whether the evidence sufficiently proves each element of an offense, *id*., and we consider conflicting evidence most favorably to the fact-finder's ruling. *Litchfield v. State*, 824 N.E.2d 356, 358 (Ind. 2005).

There was sufficient evidence to convict Brewer of attempted theft. Indiana Code § 35-43-4-2 states:

> (a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.

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[3] This case is not Brewer's first brush with the criminal courts. As an adult, he has twenty-one misdemeanor convictions (sixteen are of conversion or theft) and three felony convictions (all theft).

Brewer first argues he did not leave the store on his own volition, but rather was ordered to leave after he was seen trying to place an electric toothbrush into the waistband of his pants. Brewer further argues there was no evidence of his "intent to deprive" other than the inferences that might be drawn from his possession of the items.

We find his arguments without merit. When Griffith saw Brewer placing an electric toothbrush in his pants, he apparently did not know Brewer had placed other items inside his pants and in his waistband. It reasonably can be inferred that when Brewer left the store with the concealed items, he had no intent to pay for the items and did intend to deprive the store of the items. *See, e.g.*, *Beeks v. State*, 839 N.E.2d 1271, 1275 (Ind. Ct. App. 2005) (jury could reasonably conclude that by secreting a purse in a restroom stall, defendant knowingly exerted unauthorized control over the purse with the intent to deprive; that he was caught and returned the purse when confronted did not require acquittal), *trans. denied* 855 N.E.2d 1000 (Ind. 2006). *See also Hartman v. State*, 164 Ind. App. 356, 359, 328 N.E.2d 445, 447 (1975) ("testimony . . . that [Hartman] was discovered near the door with a shirt he had not paid for, hidden under his jacket permits an inference that he was in the process of leaving the store, without paying for the shirt, and was exerting unauthorized control over the property"); *and see* Ind. Code § 35-43-4-4(c) (evidence that a defendant: "(1) concealed property displayed or offered for sale; and (2) removed the property from any place within the business premises at which it was displayed or offered to a point beyond that at which payment should be made" is *prima*

facie evidence of intent to deprive the owner of the property or a part of its value and of the defendant's unauthorized control over the property).

Employees removed two electric toothbrushes from Brewer's waistband outside the store. Officer Nuses found six or seven more toothbrushes in the backseat of his police car after Brewer was sitting there. Inside the police station, police found six or seven toothbrushes in a second pair of pants Brewer was wearing. This was sufficient evidence for the jury to convict Brewer of attempted theft.

Brewer next argues there was insufficient evidence of battery. Indiana Code § 35-42-2-1 states:

> A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a class B misdemeanor. However, the offense is:
>
> (1) a Class A misdemeanor if:
>
> (A) it results in bodily injury to any other person.

A person engages in conduct "knowingly" if, when he engages in the conduct, that person is aware of a high probability that he or she is doing so. Ind. Code § 35-41-2-2(b). A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). "Because knowledge is the mental state of the actor, it may be proved by circumstantial evidence and inferred from the circumstances and facts of each case." *Wilson v. State,* 835 N.E.2d 1044, 1049 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 191 (Ind. 2005).

Brewer asserts he never touched Moore in an inappropriate manner.[4] Moore, a security guard, was told by an assistant manager to stop Brewer before he left the store.[5] When Moore confronted Brewer at the entrance of the store, Brewer tried to flee, and Moore used force to detain Brewer. To detain Brewer, Moore brought him to the ground. Brewer did not quit moving and tried to fight his way free. It took three employees to hold Brewer until the police arrived. A jury could reasonably infer Brewer's resistance caused Moore's injuries and Brewer's actions amounted to battery. *See, e.g, id*. at 1050 (evidence Wilson punched officer in the arm, causing officer pain, was sufficient to support conviction of battery).

The probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable jury to conclude Brewer was guilty beyond a reasonable doubt of attempted theft and battery. Therefore, the judgment of the trial court is affirmed.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.

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[4] Brewer argues the injuries Moore sustained were caused by Moore's attempt to throw Brewer to the ground.

[5] Indiana Code § 35-41-3-3 states:

> (a) A person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if:
>
> (1) a felony has been committed;
>
> (2) and there is probable cause to believe the other person committed that felony.

Griffith, who had seen Brewer trying to secrete a toothbrush, believed Brewer was leaving with additional items in his pants, which could be a felony.